

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

RICHARD AARON COBB,	§	
Petitioner,	§	
v.	§	No. 2:08cv123
RICK THALER, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
Respondent.	§	

**ORDER GRANTING IN PART PETITIONER'S REQUEST
FOR CERTIFICATE OF APPEALABILITY**

THIS MATTER comes before the Court on Petitioner Richard Aaron Cobb's ("Cobb's") request for certificate of appealability (document # 26), filed on March 21, 2011. The court, having considered the circumstances alleged and authorities cited in the request, finds that it is well-taken in part and it will be granted in part.

The court denied Cobb's application for a writ of *habeas corpus* on February 15, 2011. To appeal this decision, Cobb must obtain a certificate of appealability pursuant to 28 U.S.C. §2253. Subsection (c)(2) of that statute provides that an application for a certificate of appealability shall be granted if a petitioner makes a substantial showing of the denial of a constitutional right. To make such a showing, a petitioner must demonstrate that the issue is (1) debatable among jurists of reason, in that a court could resolve the issues in a different manner;

or (2) that the questions are adequate to deserve encouragement to proceed further. *See Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983). Because this is a capital case, any doubt whether petitioner's claims meet those standards must be resolved in favor of the petitioner. *Fuller v. Johnson*, 114 F.3d 491, 495 (5th Cir.), *cert. denied*, 522 U.S. 963 (1997).

The court finds that the question of whether Cobb's right under *Brady v. Maryland* were violated by the prosecution's failure to timely produce a copy of a letter from a jailhouse informant to the prosecuting attorney is adequate to deserve encouragement to proceed further.

The Court finds that the remainder of the issues set forth by Cobb in his request are neither debatable among jurists of reason nor adequate to deserve encouragement to proceed further.

IT IS THEREFORE ORDERED that Cobb's request for certificate of appealability is GRANTED IN PART. The Court issues a certificate of appealability for Cobb's first claim.

SIGNED this 23rd day of March, 2011.

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE